

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Formal Complaint of  
MIEAC, Inc. Against MCI, Inc. Requesting  
Permission to Discontinue Service and an  
Order Requiring Payment of Tariff Arrearages

ISSUE DATE: April 4, 2006

DOCKET NO. PT-6438/C-05-1943

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On December 13, 2005, Minnesota Independent Equal Access Corporation, Inc. (MIEAC) filed a complaint against MCI Network Services, Inc. (MCI), claiming that MCI owed MIEAC some \$1.7 million in past-due payments for tariffed, centralized equal-access services and that MCI was continuing to use these services without paying for them. The complaint sought an order requiring MCI to pay for past-due and current services; in the alternative, the complaint sought permission for MIEAC to terminate service to MCI.

On January 20, 2006, the Commission issued an order requiring MCI to answer the complaint.

On February 9, 2006, MCI filed an answer denying that it had ordered centralized equal-access services from MIEAC, stating that it had withheld payment to MIEAC only to investigate suspected billing errors, and stating that it had since remitted \$376,253.39 of the disputed amount to MIEAC.

On February 21, 2006, the Department of Commerce (the Department) filed comments stating that it had met with both parties and determined that current services were being provided by MIEAC, and paid for by MCI, to the satisfaction of both parties. The Department recommended that the remaining issues be referred to the Office of Administrative Hearings for contested case proceedings.

On March 23, 2006, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has jurisdiction over MIEAC's and MCI's provision of intrastate telecommunications services under the Minnesota Telecommunications Act, Minnesota Statutes Chapter 237, including the following specific grants of jurisdiction: Minn. Stat. §§ 237.035 (e), 237.16, 237.081, 237.461, 237.462, and 237.74.

The Commission finds that it cannot resolve the issues raised in the complaint on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **II. Issues to be Addressed**

The issues in this case are whether MCI has withheld payments due and owing to MIEAC, thereby harming MIEAC and violating Minnesota statutes that require the honoring of tariffed rates and that encourage fair and reasonable competition in intrastate telecommunications markets.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the complaint.

### **III. Procedural Outline**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

#### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Roger Moy, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2217; or Lisa Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with

the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are MIEAC, MCI, and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference will be held in this case on Monday, May 8, 2006, at 9:30 a.m. in the Large Hearing Room, Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

### **IV. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

### **V. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

## **ORDER**

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Monday, May 8, 2006, at 9:30 a.m. in the Large Hearing Room, Public Utilities Commission, 121 7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Formal Complaint of MIEAC,      MPUC Docket No. PT-6438/C-05-1943  
Inc. Against MCI, Inc. Requesting Permission to  
Discontinue Service and an Order Requiring      OAH Docket No.  
Payment of Tariff Arrearages

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Richard C. Luis, Office of Administrative Hearings, Suite, 1700, 100 Washington Square, Minneapolis,  
Minnesota 55401; (612) 349-2542

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_